Supreme Court, U.S.
FILED
95-730 AUG 30 1995
OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

TAWANA COOPER-JOLLEY,
Petitioner,

V.

STATE OF GEORGIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS
OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

TAWANA COOPER-JOLLEY,
PETITIONER/MOTHER/PRO SE
1712 THICKET WAY
DECATUR, GEORGIA 30035
H: 404-987-8121
W: 404-371-5519

QUESTION PRESENTED

1. If applicable, whether O.C.G.A. 5-6-35 (a) (2) denies Petitioner, Tawana Cooper-Jolley, equal protection of the law, violating the Fourteenth Amendment to the United States Constitution.

QUESTION PRESENTED

I. If applicable, whether O.C.G.A. § 9-9-35 (a) (2) denies Petitioner, Tawana Cooper-Jolley, equal protection of the law, violating the Fourteenth Amendment to the United States Constitution.

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United States Constitution,
Fourteenth Amendment

Petitioner, Tawana Cooper-Jolley, Mother/Pro Se, respectfully prays that a writ of certiorari issue to review the judgment and Opinion of the Court of Appeals of the State of Georgia refusing to grant Petitioner's direct appeal therefore denying Petitioner equal protection of the law, and violating the Fourteenth Amendment to the United States Constitution.

OPINIONS BELOW

The Opinion of the Court of Appeals of the State of Georgia is reported as In re A.M.D., 212 Ga. App. 291 (444SE2d 166) (1994), and appears in Appendix A to this Petition. The unpublished written Opinion of the Court of Appeals of the State of Georgia appears in Appendix B to this Petition. The unpublished written Opinion the Dekalb County Juvenile Court adopted by the Court of Appeals appears in Appendix C to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on March 7, 1995. A timely Motion for Reconsideration was filed on March 16, 1995. The Court of Appeals' denial of the Motion for Reconsideration was issued on March 23, 1995 and is set forth in Appendix D. A timely Petition for Certiorari was filed in the Supreme Court of Georgia on April 12, 1995 and is set forth in Appendix E. The Supreme Courts's denial of the Petition for Certiorari was filed June 01, 1995 and is set forth in Appendix F. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix G.

STATEMENT OF THE CASE

Petitioner shows that this case arises out of a deprivation complaint made against the Petitioner by the Dekalb County Police Department on Tuesday, October 04, 1994. The complaint alleged that Petitioner's children, two females ages 12 years old and 9 1/2 years old, also Petitioners herein, were "deprived children" as that term is defined in O.C.G.A. 15-11-2 (8) (A). This allegation was a result of a fire that occurred on this date at Petitioners' apartment while Petitioner's youngest daughter, age 9 1/2 years old was sitting home alone after school for a short period of time with indirect adult supervision, (emergency contact neighbor lives above Petitioners). Petitioner's daughter sustained no injuries from the fire and therefore received no medical treatment. Subsequently, the children were taken into protective custody and the matter was turned over to the Department of Family and Children

Services of Dekalb County, Georgia, herein DFACS, acting on behalf of the Department of Human Resources, herein DHR. On Thursday, October 06, 1994 a detentional hearing was held at the Juvenile Court of Dekalb County, Georgia and on October 11, 1994 the DFACS filed a deprivation petition alleging Petitioner's children to be "deprived children". On Monday, October 17, 1994 an adjudicatory hearing was held and at the request of t he DFACS was reset for Monday, November 14, 1994. On Monday, November 14, 1994 the Trial Judge found petitioner's children to be "deprived children". On Monday, November 28, 1994 the Trial Judge made an order granting temporary custody of Petitioner's children to the DFACS and for Petitioner to comply with a 30 day case plan provided by the DFACS. On Tuesday, December 27, 1994 Petitioner timely filed a Notice of Appeal with the Juvenile Court of Dekalb County, Georgia. On Tuesday, February 28,

1995; Petitioner received Notice of Docketing from the Court of Appeals of the State of Georgia. On Wednesday, March 8, 1995, Petitioner received an order from the Court of Appeals of the State of Georgia dated March 7, 1995 dismissing Petitioner's direct appeal for lack of jurisdiction, stating Petitioner failed to comply with O.C.G.A. 5-6-35 (a) (2).

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for two reasons: The Opinion of the Court of Appeals of the State of Georgia conflicts with Their own prior Opinions; and with the prior Opinions of the Supreme Court of the State of Georgia.

It is well settled that "where laws are applied differently to different person under the same or similar circumstances, equal protection of law is denied. Hughes v.

Reynolds, 223 Ga. 727, 157 SE2d 746 (1967). In the instance case deprivation, a violation of the law and the sole purpose for State interference and for the judicial proceeding held in the Juvenile Court of Dekalb County, Georgia, is the underlying subject of controversy in parental termination cases. See In re M.H.F., 201 Ga. App. 56, 410 S.E.2d 167 (1991); In the Interest of H.T., 198 Ga. App. 463, 402 S.E.2d 83 (1991); In the Interest of S.M., 169 Ga. App. 364; (1983); In Re Suggs, 249 Ga. App. 365, (1982); and In Re JC, 242 Ga. App. 737, (1978). In every one of theses cases the circumstances were identical to the circumstances in the instant case. Such circumstances being the State alleging some type of parental fault or inability by the parent(s) to the child(ren). Yet according to the Court of Appeals of the State of Georgia, appellants in parental termination cases have the right to an appeal. See In Re

S.N.S., 182 Ga. App. 803, (357 SE2d 127), 1987. In these parental termination cases, the Court of Appeals allows the name of the case to determine the nature of the proceeding rather than its substance. This is contrary to what the Court of Appeals wrote in the case of In the Interest of W.W.W., Ga. App. 732, 445 SE2d 832 (1994): "Pleadings are only a means to reach the merits of a case; we construe pleadings to do substantial justice and in determining the nature of a proceeding, its substance, not its name, controls." In this case the father alleged deprivation by the mother when the entire record showed the case to be a child custody matter.

According to the Court of Appeals, Petitioner failed to comply with the discretionary appeal procedure pursuant to O.C.G.A. § 5-6-35 (a) (2). Yet it was this same court in the case of In the Interest of

A.L.L., 211 Ga. App. 767, 440 SE2d 517 (1994) that said:

> "Although not raised by the parties, we first consider the issue of our jurisdiction and whether this matter is one involving child custody, requiring an application to appeal. O.C.G.A. § 5-6-35 (a) (2).....A deprivation proceeding is to determine whether the child is a deprived child. O.C.G.A. § 15-11-33 (a). If the child is found to be deprived, the court is authorized to allow the child to remain with his parents, or other custodian, or transfer temporary legal custody to another individual or agency. O.C.G.A. § 15-11-34 (a). Although the juvenile court is authorized to determine who will exercise custody over a 'deprived child', the

proceeding itself is to determine whether the child is deprived and is not an action brought to decide custody matters concerning the child."

The appellant in the above citation of authority was granted a direct appeal and the case was labeled "child custody", identical to Petitioner's.

O.C.G.A. § 5-6-35 (a) (2) grants arbitrary discretion. In the case of In re D.H., 178 Ga. App. 119 (342 SE2d 367) (1986), although the underlying subject of controversy, deprivation, was identical to Petitioner's, appellants in this case were granted a direct appeal simply because the trial judge in this case imposed restrictions on the appellants rather than transferring temporary legal custody.

O.C.G.A. § 5-6-35 (a) (2) precisely states that it is applicable only to judgments or orders from domestic relations cases. According to O.C.G.A. § 5-6-35 (a) (2):

> 5-6-35. Cases in which application for appeal required; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order granting or denying appeal; procedure following grant of appeal; supersedeas.
>
> (a) Appeals in the following cases shall be taken as provided in this Code section:
>
> (2) Appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases including but not limited to,

granting or refusing a divorce or temporary or permanent alimony, awarding or refusing to change child custody or hold- to declining to hold persons in contempt of such alimony or child custody judgment or orders;

In addition the Supreme Court of the State of Georgia made it very clear in the case of Eickhoff v. Eickhoff, 263 Ga. 498, 435 SE2d 914, that "O.C.G.A. § 5-6-35 (a) (2) is applicable to appeals in "domestic relations" cases. If the sole issue to be resolved on appeal concerns "domestic relations", the appeal is clearly from a "domestic relations" case and must be taken to the appropriate appellate court pursuant to O.C.G.A. § 5-6-35 (a) (2). If, however, additional issues which would otherwise be directly appealable are also to be resolved

on appeal, the appeal is not from a "domestic relations" case. Under those circumstances, the case is directly appealable to the appropriate appellate court and the "domestic relations" issue can then be raised pursuant to O.C.G.A. § 5-6-34 (d). Under that statutory provision, a "domestic relations" issue "may be reviewed on direct appeal, when it is appealed as part of a judgment that is directly appealable".

The Supreme Court of the State of Georgia also made it clear in the case of Citizens & Southern National Bank v. Rayle et al, 246 Ga. 727, (273 SE2d 139) (1980) that such "domestic relations" cases are between parties who have familial bonds. Referencing O.C.G.A. § 5-6-35 (a) (2), the Supreme Court of the State of Georgia said: "The clear intent of section (a) (2), above, was to give the appellate court (the Supreme Court in Divorce and alimony cases and the Court of

Appeals in child custody cases) the discretion not to entertain an appeal where the superior or juvenile court had made a decision as to divorce, alimony, child custody or contempt, the latter three of which are in large part discretionary and yet frequently appealed by the losing spouse". In the instant case, there are no familial bonds between the State and Petitioner nor between the State and Petitioner's children. The State took Petitioner's children into "protective custody" as a result of the deprivation allegation, therefore simply exercising their Federal and State Constitutional obligation to provide Petitioner's children with equal protection of the laws. This did not mean, however, that Petitioner should be deprived of her Federal and State constitution to Due Process of the law.

Prior to it being established by a Court

of Law that Petitioner did in fact commit deprivation, it would have been unconstitutional for the State to act under the Parents Patriae philosophy at the Court proceeding, for Petitioner would have been deprived of her liberty to raise her children according to her own sincerely held belief without Due Process of the Law. The Court proceeding held at the Dekalb County Juvenile Court was the proceeding that provided Petitioner Due Process of the Law. The focus was not about what was best for Petitioner's children because again it would be unconstitutional to do so. Instead, the focus was about Petitioner's innocence or guilt. This is similar to what the Court of Appeals Court held in the case of In re D.H., supra. In this case the Trial Judge found appellants children to be "deprived children". On appeal the Court of Appeals held: "It has been held that to authorize a termination of parental rights, or even a

loss of temporary custody by a child's parents, on the basis of deprivation, the deprivation must be shown to have resulted from unfitness on the part of the parent that is either intentional or unintentional misconduct resulting in the abuse or neglect of the child or by what is tantamount to physical or mental incapability to care for the child.....The record contains no support for a finding that the children suffered any deprivation as a result of their living conditions.....Absent evidence that the appellants' methods of child raising adversely affected their children's physical, mental, or emotional health or morals", the conditions and restrictions imposed by the lower court, its dispositional order, must be viewed as an impermissible intrusion on the appellant's rights as parents to raise their children in accordance with heir own sincerely held beliefs and convictions."

Petitioner has shown that deprivation is a violation of the law and is therefore directly appealable. O.C.G.A. § 15-11-2 (8) (A). O.C.G.A. § 16-5-70 (a). O.C.G.A. § 5-6-33 (a) (1). Should the Opinion of the Court of Appeals of the State of Georgia stands, Petitioner will be denied her Fourteenth Amendment to the United States Constitution "equal protection of the laws."

CONCLUSION

For the reasons set forth above, a writ of certiorari should be issue to review the judgment and opinion of the Court of Appeals of the State of Georgia.[1]

---

[1]If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals of the State of Georgia for redetermination in light of the Supreme Court of the State of Georgia's Opinion in Eickhoff v. Eickhoff, supra, and in light of the Court of Appeals' own Opinion in In the Interest of A.L.L., supra.

DATED: August 30, 1995.

Respectfully submitted,

Tawana Cooper-Jolley,

Petitioner//Mother//Pro Se

BEST AVAI

APPENDIX

LABLE COPY

A94A1007. IN THE INTEREST OF A.M.D., a child.

(444 SE2d 166)

McMurray, Presiding Judge.

This is a child custody case where the minor child was placed in the father's custody. The mother appeals directly from an order denying her motion for new trial and her motion for a stay of enforcement of the order changing custody. The mother did not seek nor did this court grant a discretionary appeal. Held:

"'"OCGA § 5-6-35 (a) (2) and (d) (Code Ann. § 6-701.1) provides that appeals from judgments awarding or refusing to change child custody shall be by application in the nature of a petition to the appropriate appellate court filed with the clerk of that court within 30 days of the entry of the order.

This court has held that appeals from orders dealing with child custody which are not filed pursuant to OCGA § 5-6-35 (Code Ann. § 6-701.1) must be dismissed for lack of jurisdiction. (Cit.)" Jones v. Warrenfells, 166 Ga. App. 519 (305 SE2d 147) (1983).' Dudai v. Spisak, 170 Ga. App. 744 (318 SE2d 501). It follows that the direct appeal in this child custody case must be dismissed." Hamilton v. Deutscher, 201 Ga. App. 883 (412 SE2d 875).

Appeal dismissed. Pope, C.J., and Smith, J., concur.

DECIDED MARCH 4, 1994.

Child custody. Gwinnett Juvenile Court. Before Judge Rodatus.

Donald T. Salter, for appellant.

Arline S. Kerman, for appellee.

Court of Appeals

of the State of Georgia

ATLANTA, March 7, 1995

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A95A1215. IN THE INTEREST OF T.W. AND T.C., CHILDREN.

Appellant Tawana Cooper-Jolley, appearing pro se, filed this direct appeal from the order of the Juvenile Court of DeKalb County ordering that temporary custody of the subject children be placed with the DeKalb County Department of Family and Children Services. Pursuant to OCGA § 5-6-35 (a) (2), appeals from orders concerning child custody are subject to the discretionary appeal procedure. As the appellant has not complied with the discretionary appeal procedure, this direct appeal must be dismissed for lack of jurisdiction. In re A.M.D., 212 Ga. App. 291 (444 SE2d 166)

(1994).

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR -7 1995

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.
/S/ William S. Martin /S/

FILED
CLERK JUVENILE COURT
DEKALB COUNTY, GA
94 NOV 16 AM 10:57

IN THE JUVENILE COURT OF

DEKALB COUNTY, GEORGIA

FILE NUMBER 94-3038-00-01

IN THE INTEREST OF

TEARENE WEAVER, SEX F, AGE 9, DOB 03-15-85,

CASE #044-94J-6765A

TANYA COOPER, SEX F, AGE 12, DOB 10-5-82,

CASE #044-94J-6766A

A child under 18 years of age.

O R D E R

An adjudicatory hearing was held on a deprived petition on November 14, 1994. Ms. Tawana Cooper-Jolley, the mother of the children, was present and after being fully advised of her rights, waived her right be be represented by an attorney. The Department of Family and Children Services was represented by Mr. John Martin. The interest

of the children was represented by Ms. Dorothy Murphy.

After hearing evidence and argument of counsel the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACTS

The Court finds that the children are deprived and are in need of the protection of this Court based on the following findings of fact: that the children are often left alone without adult supervision. On or about October 4, 1994, a fire was started at the residence as a result of the youngest child cooking on the stove. This was the second fire in the residence in as many weeks. The mother does not want the children returned to the home at this time because the youngest child has been disobedient. The mother shows little concern for the children. The mother has a history of physical abuse and both children were in foster care in California. She has a history of mental

problems for which counseling has been recommended. To date she has failed to get the recommended counseling for herself and the children.

Reasonable efforts have been made to prevent or eliminate the need for removal of the children from their home.

CONCLUSIONS OF LAW

It is concluded as a matter of law from the above findings of facts and other evidence, which is clear and convincing, that the child is deprived as defined by law. It is further found that it was not appropriate or in the best interest of the children to prevent removal from the home. Continuation in the home would be contrary to the welfare of the children. Therefore the children are in need of the protection of this court and are to remain in the custody of the DeKalb County Department of Family and Children Services pending disposition and further

Orders in their interest.

It is further ordered that the custodian be and hereby is authorized to obtain a physical examination, ordinary medical care, and such additional medical treatment and care which, in the opinion of a licensed physician, required prompt treatment for the care of the child while the children are in their custody.

This the 14th day of November, 1994.

/S/ Gregory A. Adams /S/

GREGORY A. ADAMS, JUDGE

DEKALB COUNTY JUVENILE COURT

FILED
CLERK JUVENILE COURT
DEKALB COUNTY, GA
94 NOV 29 PM 3:41

IN THE JUVENILE COURT OF

DEKALB COUNTY, GEORGIA

FILE NUMBER 91-0765-00-01

IN THE INTEREST OF

TEARENE WEAVER, SEX F, AGE 9, DOB 03-15-85,

CASE #044-94J-6765A

TANYA COOPER, SEX F, AGE 12, DOB 10-5-82,

CASE #044-94J-6766A

A child under 18 years of age.

O R D E R

A petition having been filed in this Court alleging that the above-named children deprived, and at an adjudicatory hearing the children were found to be deprived and in need of the protection of this Court,

It is therefore ORDERED AND ADJUDGED that the temporary custody of the children is placed with the DeKalb County Department of

Family and Children Services until the 2nd day of April, 1996, unless modified, terminated, or extended as provided by law. Before physical custody of the children can be placed back with the parents, guardian, or other custodian, the Department of Family and Children Services shall make a written request. Such placement shall be in the discretion of the Court, and shall be approved or denied by Court Order.

The permanent plan for these children is outlined in the 30 day case plan which is attached hereto and made a part hereof by reference.

It is further Ordered that the custodian be and hereby is authorized to obtain a physical examination, ordinary medical care, and such additional medical treatment and care which, in the opinion of a licensed physician, requires prompt treatment for the care of the said children while said children are in their custody.

SO ORDERED this the 28th day of November, 1994.

/S/ Gregory A. Adams /S/

GREGORY A. ADAMS, JUDGE

DEKALB COUNTY JUVENILE COURT

Court of Appeals

of the State of Georgia

ATLANTA, March 23, 1995

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

Case No. A95A1215

IN THE INTEREST OF T.W. AND T.C., CHILDREN

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 23 1995

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

/S/ William S. Martin /S/

IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA

IN THE INTEREST OF		
T.W.AND T.C.,CHILDREN	:	COURT OF APPEALS
PETITIONERS	:	OF THE STATE OF
	:	GEORGIA
V.	:	CASE NO. A95A1215
STATE OF GEORGIA	:	
RESPONDENT	:	

PETITION FOR CERTIORARI

Submitted by:

Tawana Cooper-Jolley, Petitioner/Mother
Pro Se
1712 Thicket Way
Decatur, Georgia 30035
H: 404-322-9705
W: 404-656-2595

RECEIVED BY HAND DELIVERY
AND FILED: APR 12 1995

/S/ Jan Eidson /S/
Supreme Court of Georgia

IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

IN THE INTEREST OF		
T.W.AND T.C.,CHILDREN	:	COURT OF APPEALS
PETITIONERS	:	OF THE STATE OF
	:	GEORGIA
V.	:	CASE NO. A95A1215
STATE OF GEORGIA	:	
RESPONDENT	:	

PETITION FOR CERTIORARI

COMES NOW, Tawana Cooper-Jolley, Petitioner/Mother herein and Defendant in the case below, and files this her Petition for Certiorari and shows to the Court as follows:

I. CERTIFICATION

Petitioner hereby certifies that a copy of the Court of Appeals' Opinion is attached to each copy of this Petition in accordance with Rule 31 of the Georgia Supreme Court Rules. This Opinion was issued on March 07, 1995, and Petitioner timely filed a Motion

for Reconsideration which was denied on March 23, 1995. Petitioner then timely filed her Notice of Intention to Apply to the Supreme Court of Georgia for a Writ of Certiorari on March 31, 1995. Petitioner shows that this case and the issued involved is of great concern, gravity, and importance to the public in that it deals with an issue of first impression, ie. O.C.G.A. 5-6-35 (a) (2) violates Art. I, Sec. I, Par II of the Georgia Constitution of 1976 and the United States Constitution Amendment 14 in that it denies equal protection of the law and violates due process of law.

II. STATEMENT OF FACTS

Petitioner shows that this case arises out of a deprivation complaint made against the petitioner by the Dekalb County Police Department on Tuesday, October 04, 1994. The complaint alleged that petitioner's children, two females ages 12 years old and 9 1/2 years

old also petitioners herein, were "deprived children." This allegation was as a result of a fire that occurred on this date at petitioner's apartment while petitioner's youngest daughter, age 9 1/2 year old was sitting home alone after school for a short period of time. Petitioner's daughter sustained no injuries from the fire and therefore received no medical treatment. Subsequently, the children were taken into protective custody and the matter was turned over the Department of Family and Children Services of Dekalb County, Georgia, herein DFACS, acting on behalf of Department of Human Resources, herein DHR. A detentional hearing was held on Thursday, October 06, 1994 at the Juvenile Court of Dekalb County, Georgia and on October 11, 1994 the DFACS filed a deprivation petition. On Monday, October 17, 1994 an adjudicatory hearing was held and at the request of the DFACS was reset for Monday, November 14, 1994. On

Monday, November 14, 1994 the trial judge found petitioner's children to be "deprived children." On Monday, November 28, 1994 the trial judge made an ordered granting temporary custody of petitioner's children to the DFACS and for petitioner to comply with a 30 day case plan provided by the DFACS. On Tuesday, December 27, 1994 petitioner timely filed a Notice of Appeal with the Juvenile Court of Dekalb County, Georgia. On Tuesday, February 28, 1995 petitioner received Notice Of Docketing from the Court of Appeals of the State of Georgia. On Wednesday, March 08, 1995 petitioner received an order from the Court of Appeals of the State of Georgia dated March 07, 1995 dismissing petitioner's direct appeal for lack of jurisdiction.

III. MEMORANDUM OF LAW

Where laws are applied differently to different persons under the same or similar circumstances, equal protection of law is

denied. Hughes v. Reynolds, 223 Ga. 727, 157 SE2d 746 (1967). Pleadings are only a means to reach the merits of a case; we construe pleadings to do substantial justice and in determining the nature of a proceeding, its substance, not its name, controls. In the Interest of W.W.W., Ga. App. 732, 445 SE2d 832 (1994). In the instant case deprivation, a violation of the law and the sole purpose for State interference for the judicial proceeding held in the Juvenile Court of Dekalb County, Georgia, is the underlying subject of controversy identical to the underlying subject of controversy in cruelty to children cases O.C.G.A. § 16-5-70 (a), and in parental termination cases which are cases as a result of parents violating O.C.G.A. § 15-11-2 (8).

Liberty guaranteed by this amendment denotes not merely freedom from bodily restraint but also the right of the

individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship GOD according to the dictates of his own conscience, and generally to enjoy those privileges long recognized as essential to the orderly pursuance of happiness by freemen. Drummond v. Fulton County Department of Family & Children's Services, 547 F.2d 835 (5th Cir. 1977). Similar to the petitioner in the instant case, parents found responsible for the deprivation of their child or children in cruelty to children cases and in parental termination cases are deprived of the liberty of the custody, care, and control of their children. Such parents in cruelty to children cases have the right to a direct appeal. U.S. Const., Amendments 5 and 14; Ga Const. 1983, Art. I, Sec. I, Para. I, and Ga. Const. 1983, Art. I, Sec. I, Para II. Such parents in parental

termination cases also have the right to a direct appeal. See In Re S.N.S., 182 Ga. App. 803, (357 SE2d 127), 1987.

Petitioner, in the instant case, whose circumstances are similar to or the same as those in cruelty to children cases and in parental termination cases, filed a direct appeal to the Court of Appeals of the State of Georgia. However, the Court of Appeals of the Sate of Georgia dismissed Petitioner's direct appeal for lack of jurisdiction. According to the Court of Appeals of the State of Georgia, Petitioner failed to comply with the discretionary appeal procedure pursuant to O.C.G.A. § 5-6-35 (a) (2). Yet it was this same court that granted the appellant a direct appeal in the case of In the Interest of A.L.L., 211 Ga. App. 767, 440 SE2d 517 (1994). The appellant's underlying subject of controversy In the Interest of A.L.L., supra, is identical to the underlying

subject of controversy in the instant case, in cruelty to children cases, and in parental termination cases; deprivation, a violation of the law.

In the Interest of A.L.L., supra, the Court of Appeals in the State of Georgia said:

> "Although not raised by the parties, we first consider the issue of our jurisdiction and whether this matter is one involving child custody, requiring an application to appeal. O.C.G.A. § 5-6-35 (a) (2)."

After briefly discussing this case, the Court of Appeals of the State of Georgia then quoted a statement from Anderson v. Sanford, 198 Ga. App. 410, 411 (401 SE2d 604) (1991).:

> "A deprivation proceeding is to determine whether the child is a deprived child. O.C.G.A. § 15-11-33

(a). If the child is found to be deprived, the court is authorized to allow the child to remain with hi parents, or other custodian, or transfer temporary legal custody to another individual or agency. O.C.G.A. § 15-11-34 (a). Although the juvenile court is authorized to determine who will exercise custody over a 'deprived child', the proceeding itself is t o determine whether the child is deprived and is not an action brought to decide custody matters concerning the child.

The above case, In the Interest of A.L.L., supra, 211 Ga. App. 767, 440 SE2d 517 (1994) was named Child custody.

In the case of In the Interest of D.L.G., 212 Ga. App. 353, 442 SE2d 11 (1994), the underlying subject of controversy,

deprivation, a violation of the law, is identical to the underlying subject of controversy in the instant case. The appellant in this case was granted a direct appeal. This case was named Deprivation. In the case of In re D.H., 178 Ga. App. 119 (342 SE2d 367) (1986), the underlying subject of controversy was also deprivation, a violation of the law. The appellants in this case were also granted a direct appeal. The Court of Appeals of the State of Georgia held:

> It has been held that to authorize a termination of parental rights, or even a loss of temporary custody by a child's parents, on the basis of deprivation, the deprivation must be shown to have resulted from unfitness on the part of the parent that is either intentional or unintentional misconduct resulting in the abuse or neglect of the child or by what is tantamount to

physical or mental incapability to care for the child.

The above case was named Child custody.

Petitioner shows that if this decision of the Court of Appeals is allowed to stand, parents in a very serious matter, will only be afforded their constitutional rights at the discretion of judges. This is contrary to the Constitution of the United States and the Constitution of the State of Georgia.

IV. CONCLUSION

In the instant case Petitioner was deprived of the liberty of the custody, care, and control of her children. Petitioner's children were taken from her and placed with absolute strangers, the DFACS, who then placed Petitioner's children with more absolute strangers, foster parents. In the State of Georgia and in the United States of America no person shall be deprived of life,

liberty, or property except by due process and everyone have the right to equal protection of law. Should O.C.G.A. § 5-6-35 (a) apply to the instant case, Petitioner is denied equal protection of law.

Respectfully submitted this 12th day of April 12, 1995,

/S/ Tawana Cooper-Jolley /S/

Tawana Cooper-Jolley,
Petitioner/Mother
Pro Se
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W: 404-656-2595

CERTIFICATE OF SERVICE

I, Tawana Cooper-Jolley, PETITIONER/ MOTHER/PRO SE, do hereby certify that I have this day served the within and foregoing PETITION FOR CERTIORARI prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon:

1. Robert G. Nardone, Attorney At Law
   Attorney for Dekalb Department of
   Family & Children Services
   68 North Avondale Road
   P.O. Box 37
   Avondale Estates,Georgia 30002-0037

2. Dorothy Murphy, Child Advocacy
   Attorney
   Of Dekalb County Juvenile Court
   Representing the Interest of
   Minor Children Tearene Weaver and
   Tanya Cooper

3631 Camp Circle, 3rd Floor

Decatur, Georgia 30032

This 12th day of April, 1995.

/S/ Tawana Cooper-Jolley /S/

Tawana Cooper-Jolley,

Petitioner/Mother

Pro Se

1712 Thicket Way

Decatur, Georgia 30035

H: 404-322-9705

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SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: June 01, 1995

Tawana Cooper-Jolley

1712 Thicket Way

Decatur GA 30035

Case No. S95C1134

IN RE: T.W. ET AL.

COURT OF APPEALS CASE NO. A95A1215

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

_____

_____

_____

Sincerely,

Sherie M. Welch, Clerk

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.